1   UNITED STATES PATENT AND TRADEMARK OFFICE

2   _____

3

4   BEFORE THE BOARD OF PATENT APPEALS

5   AND INTERFERENCES

6   _____

7

8   *Ex parte* NEVEIN T. SULTAN,

9   DWIGHT D. JAMIESON, and

10   VALERIE A. SIMPSON

11   _____

12

13   Appeal 2009-008506

14   Application 09/899,265

15   Technology Center 3600

16   _____

17

18   Decided: April 20, 2010

19   _____

20

21   Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and

22   ANTON W. FETTING, *Administrative Patent Judges.*

23   FETTING, *Administrative Patent Judge.*

24   DECISION ON APPEAL

1   STATEMENT OF THE CASE

2   Nevein T. Sultan, Dwight D. Jamieson, and Valerie A. Simpson

3 (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of

4 claims 1-8, 10-15, 17-25, and 27-31, the only claims pending in the

5 application on appeal.

6   We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)

7 (2002).

8   SUMMARY OF DECISION[1]

9   .   We REVERSE.

10   THE INVENTION

11   The Appellants invented a policy based traffic forwarding control within

12 a data network (Specification 7:¶ 0017).

13   An understanding of the invention can be derived from a reading of

14 exemplary claim 1, which is reproduced below [bracketed matter and some

15 paragraphing added].

16   1. A method of enabling policy-based traffic forwarding in a
17   data network having at least two area border routers (ABRs),
18   the method comprising steps of:

19   [1] generating a link state advertisement (LSA) message, and

---

[1] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed August 15, 2008) and Reply Brief ("Reply Br.," filed December 16, 2008), and the Examiner's Answer ("Ans.," mailed November 3, 2008).

asserting a route tag in respect of the generated LSA
message; and

[2] at each ABR receiving the LSA message,

controlling propagation of the received LSA,

into an area of the data network hosted by the ABR,

using a respective forwarding policy

having a match criteria corresponding to the
asserted route tag;

[3] wherein the respective forwarding policy of a first ABR
differs from that of a second ABR,

such that the received LSA message is flooded into the
area hosted by the first ABR, and

not flooded into the respective area hosted by the second
ABR.

THE REJECTION

The Examiner relies upon the following prior art:

Zhang   US 6,275,492 B1   Aug. 14, 2001

Claims 1-8, 10-15, 17-25, and 27-31 stand rejected under 35 U.S.C.
§ 102(e) as anticipated by Zhang.

ARGUMENTS

The Appellants argue these claims as a group. Accordingly, we select
claim 1 as representative of the group. 37 C.F.R. § 41.37(c)(1)(vii) (2008).

The Appellants contend that a route tag is not a destination address
(Appeal Br. 5), that specifically forwarding packets to a destination address
is entirely different from flooding link state advertisements (LSAs) into an
area hosted by an area border router (ABR) (Appeal Br. 6), that calculating

1 routes to various destinations using a received LSA, and controlling

2 propagation of a received LSA are radically different and entirely

3 independent functions (Appeal Br. 7), and that since an LSA contains no

4 destination address, one cannot use an LSA to control propagation of

5 received LSAs (*id.*).

ISSUES

7 The issue of whether the Examiner erred in rejecting claims 1-8, 10-15,

8 17-25, and 27-31 under 35 U.S.C. § 102(e) as anticipated by Zhang turns on

9 whether Zhang describes a forwarding policy of a first ABR that differs

10 from that of a second ABR, such that a received LSA message is flooded

11 into the area hosted by the first ABR, and not flooded into the respective

12 area hosted by the second ABR.

FACTS PERTINENT TO THE ISSUES

14 The following enumerated Findings of Fact (FF) are believed to be

15 supported by a preponderance of the evidence.

16 *Facts Related to the Prior Art*

17 *Zhang*

18 01.   Zhang is directed to routing data through one or more networks.

19 Zhang routes data packets through a network using router

20 identification information contained in the data packets. Zhang

21 1:9-13.

22 02.   Zhang several two protocols. One, the link state advertisement

23 (LSA) protocol is implemented by having routers send

24 information regarding the network apology to the nodes. Another

1   protocol, referred to as tag switching, forwards data packets based

2   on tags inserted into the data packet rather than based on the

3   packet's destination address. Zhang 1:26-60.

4   03.   Based on the information received in LSA's, each router

5   calculates routes to various destinations in the network. In

6   addition to maintaining a routing table of routes to various

7   destinations, each router maintains a routing table in each area for

8   all Area Border Routers (ABRs) in the area. Zhang 3:42 – 4:22.

9   04.   Zhang describes a composite of the two protocols by using

10   existing router IDs to perform the function of a route tags. The

11   route identifiers are transmitted automatically by advertisement of

12   LSAs. Zhang 4:59-67.

13   PRINCIPLES OF LAW

14 *Anticipation*

15 "A claim is anticipated only if each and every element as set forth in the

16 claim is found, either expressly or inherently described, in a single prior art

17 reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628,

18 631 (Fed. Cir. 1987).

19 "When a claim covers several structures or compositions, either

20 generically or as alternatives, the claim is deemed anticipated if any of the

21 structures or compositions within the scope of the claim is known in the

22 prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001).

23 "The identical invention must be shown in as complete detail as is

24 contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226,

1 1236 (Fed. Cir. 1989). The elements must be arranged as required by the

2 claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is

3 not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

4   ANALYSIS

5   The Appellants' argument is essentially that the Examiner's analysis

6 conflates the transmission of LSAs and messages. We agree with the

7 Appellants. The Examiner's analysis at Ans. 6 describes each of the

8 protocols. The Examiner correctly observes that when a router receives a

9 data packet it determines from the route tag whether the data packet is

10 destined for each domain by matching the switch tag information to its own

11 information, and that if a data packet is not destined for the routers domain,

12 the data packet is sent to a router of a different domain.

13   The Examiner then erroneously concludes that this sequence applies to

14 transmissions of LSAs. The transmission of LSAs is independent of source

15 to destination message transmission and uses a protocol different from that

16 of source to destination message transmission. As the Appellants argue, the

17 transmission of LSAs is simply proximity-based, transmitting from one

18 router to another router that is connected next in sequence. FF 02-03. Thus,

19 the Examiner's inference that the protocol recited in claim 1 limitation [3] is

20 inherent in existing packet transmission protocols is in error by assuming

21 that the LSA transmission carries with it a destination address that directs

22 selection of Area Border Routers (ABRs).

1   CONCLUSIONS OF LAW

2   The Examiner erred in rejecting claims 1-8, 10-15, 17-25, and 27-31

3   under 35 U.S.C. § 102(e) as anticipated by Zhang.

4   DECISION

5   To summarize, our decision is as follows.

6   • The rejection of claims 1-8, 10-15, 17-25, and 27-31 under 35 U.S.C.

7   § 102(e) as anticipated by Zhang is not sustained.

8

9   <u>REVERSED</u>

10

11

12

13   mev

14

15   Address

16   BLAKE, CASSELS & GRAYDON, LLP
17   45 O'CONNOR ST., 20TH FLOOR
18   OTTAWA ON K1P 1A4 CA CANADA